Chapter 3: Procedural Requirements

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3.1 Threshold Determinations

A. Informing Alleged Contemnor of the Nature of the Proceedings

Prior to initiation of the proceedings, the court must determine whether civil or criminal contempt proceedings are appropriate because a defendant charged with criminal contempt is entitled to be notified of that fact when he is notified of the charges. *In re Contempt of Rochlin (Kane v Rochlin),*

186 Mich App 639, 649 (1990). In *Jaikins v Jaikins*, 12 Mich App 115, 120 (1968), the Court of Appeals, quoting *Gompers v Bucks Stove & Range Co*, 221 US 418, 446; 31 S Ct 492; 55 L Ed 797 (1911), emphasized that the nature of the proceedings must be made clear by the pleadings:

> "'[E]very citizen, however unlearned in the law, by mere inspection of the papers in contempt proceedings ought to be able to see whether it was instituted for private litigation or for public prosecution, whether it sought to benefit the complainant or vindicate the court's authority. He should not be left in doubt as to whether relief or punishment was the object in view.'"*

*Form MC 230, the motion and order to show cause, contains a check box to indicate whether civil or criminal contempt is being alleged.

See also *Sands v Sands*, 192 Mich App 698, 702–03 (1992) (where the defendant was not informed that criminal contempt was alleged, and where the defendant was called to testify under the "adverse party rule," defendant's contempt conviction must be reversed).

B. Determining Whether a Hearing Is Required

After the court determines whether criminal or civil contempt proceedings are appropriate, the court must determine whether the contempt was "direct" or "indirect." If the contempt was committed "during its sitting" and in the "immediate view and presence of the court," the contempt is "direct" and the court may summarily make a finding of contempt and punish the contemnor. If, on the other hand, the court must rely on the testimony of others to establish that contumacious conduct has occurred, the contempt is indirect and a separate hearing must be held on the issue. Civil contempt may be direct or indirect, and criminal contempt may be direct or indirect.*

*See Sections 2.4–2.5 for discussion of direct and indirect contempt.

3.2 Procedural Due Process Requirements

A. General Requirements for All Cases of Indirect Contempt

In all cases of indirect contempt, proper notice of the charges, a reasonable opportunity to prepare a defense or explanation, and the opportunity to testify and call witnesses are basic procedural due process requirements. *FOP, Lodge 98 v Kalamazoo County*, 82 Mich App 312, 315–17 (1978), and *In re Oliver*, 333 US 257, 275; 68 S Ct 499; 92 L Ed 682 (1948). What constitutes a reasonable opportunity to prepare a defense "must be viewed in the context of the entire situation." *Cross Co v UAW Local No 155 (AFL-CIO)*, 377 Mich 202, 212–13 (1966). The Court in *Cross* considered the seriousness of the charges and the amount of time allowed for trial preparation, including adjournments.

A public trial is required. *In re Oliver*, 333 US 257, 273; 68 S Ct 499; 92 L Ed 682 (1948).

An indigent defendant may not be incarcerated following a civil or criminal contempt proceeding if assistance of counsel has been denied. *Mead v*

Batchlor, 435 Mich 480, 505–06 (1990), and *Cooke v United States*, 267 US 517, 537; 45 S Ct 390; 69 L Ed 767 (1925).

B. Procedural Requirements That Differ Depending Upon Whether Proceeding Is Civil or Criminal

In cases of criminal contempt, the contemnor is entitled to the procedural protections that a defendant in a criminal case of equal gravity would be entitled to. *People v Johns*, 384 Mich 325, 333 (1971).*

*For a summary of all of the constitutional rights afforded alleged criminal contemnors, see *United Mine Workers v Bagwell*, 512 US 821, 826–27; 114 S Ct 2552; 129 L Ed 2d 642 (1994).

Criminal contempt must be proven "beyond a reasonable doubt." *In re Contempt of Rapanos*, 143 Mich App 483, 488–89 (1985). In civil contempt cases, the standard of proof is unclear. Some decisions require that proof of the contumacious conduct must be "clear and unequivocal." See, e.g., *Detroit Bd of Ed v Detroit Federation of Teachers*, 55 Mich App 499, 505–06 (1974). Other decisions have required only that the contempt be proven by a preponderance of the evidence. See, e.g., *Jaikins v Jaikins*, 12 Mich App 115, 121 (1968).

In criminal contempt cases, the alleged contemnor is presumed innocent and may not be compelled to testify against himself. *Gompers v Bucks Stove & Range Co*, 221 US 418, 444; 31 S Ct 492; 55 L Ed 797 (1911), and *Jaikins v Jaikins*, 12 Mich App 115, 121 (1968).

In civil contempt proceedings and criminal contempt proceedings not deemed "serious," the contemnor has no right to a jury trial.*

*See Section 3.15, below.

3.3 Summary Contempt Proceedings

Summary contempt proceedings may be conducted in cases of direct contempt.* MCL 600.1711(1); MSA 27A.1711(1) states:

*For a detailed discussion of direct contempt, see Section 2.4.

> "When any contempt is committed in the immediate view and presence of the court, the court may punish it summarily by fine, or imprisonment, or both."

Note that the statute uses the word "may" rather than "shall." Summary contempt proceedings are not required in all cases of direct contempt.

When seeking to punish for contempt of court, a court should utilize "the least possible power adequate to the end proposed." *Harris v United States*, 382 US 162, 165; 86 S Ct 352; 15 L Ed 2d 240 (1965), and *In re Contempt of Scharg (People v Godfrey)*, 207 Mich App 438, 439 (1994). Due process requires that summary contempt proceedings be used only when absolutely necessary to prevent "demoralization of the court's authority." *In re Oliver*, 333 US 257, 275; 68 S Ct 499; 92 L Ed 682 (1948).

Summary contempt proceedings are proper "where immediate corrective steps are needed to restore order and maintain the dignity and authority of the court." *Johnson v Mississippi*, 403 US 212, 214; 91 S Ct 1778; 29 L Ed

2d 423 (1971). See also *People v Kurz*, 35 Mich App 643, 660 (1971) ("in the absence of circumstances necessitating immediate corrective action," a separate hearing before a different judge should be conducted), and *In re Contempt of Warriner (City of Detroit v Warriner)*, 113 Mich App 549, 555 (1982) ("summary punishment was required in order to restore order in the courtroom and to ensure respect for the judicial process itself," where defendant raised his fist in the air and shouted). Compare *In the Matter of Meizlish*, 72 Mich App 732, 740 (1976) (summary proceedings were inappropriate, where an attorney's allegedly contemptuous remarks were made after his clients had been sentenced and the courtroom was "all but empty").

Summary punishment of contempt that occurs in the court's immediate view and presence does not violate procedural due process requirements. *In re Contempt of Warriner (City of Detroit v Warriner)*, 113 Mich App 549, 554–55 (1982).

3.4 Deferred Proceedings

*See Section 3.14(A), below, for a detailed discussion of whether a different judge must conduct the contempt hearing.

"Although summary punishment of contumacious behavior is proper when the behavior is committed in the court's presence, and the court further determines that immediate corrective action is necessary, MCL 600.1711; MSA 27A.1711, summary punishment is regarded with disfavor when deferred until the conclusion of a trial." *In re Contempt of Scharg (People v Godfrey)*, 207 Mich App 438, 439 (1994), citing *People v Kurz*, 35 Mich App 643, 657 (1971). In *Scharg*, the defendant was a defense attorney cited for five incidents of contempt during a criminal trial. The contempt citation was deferred until the end of the trial, but the court denied defendant's request for a hearing on the contempt charges. The Court of Appeals held that a hearing was required. Defendants in deferred summary proceedings are entitled to a full hearing before a different judge.* The Court reasoned that deferral of a contempt citation until after the conclusion of a trial indicates that immediate corrective action is unnecessary; therefore, the procedural protections of indirect contempt proceedings must be afforded. *Scharg*, *supra*, at 439–40.

If contempt proceedings are deferred, the contemnor is entitled to all of the same procedural protections as are afforded contemnors in indirect contempt proceedings. *In re Oliver*, 333 US 257, 275–76; 68 S Ct 499; 92 L Ed 682 (1948). But see *Sacher v United States*, 343 US 1, 11; 72 S Ct 451; 96 L Ed 717 (1952), where the Court, construing Rule 42(a) of the Federal Rules of Criminal Procedure, upheld the *punishment* of attorneys following the trial during which the attorneys were found in contempt.

3.5 Indirect Contempt

A hearing must be conducted when the contempt is indirect. MCL 600.1711(2); MSA 27A.1711(2) states:

> "When any contempt is committed other than in the immediate view and presence of the court, the court may punish it by fine or imprisonment, or both, after proof of the facts charged has been made by affidavit* or other method and opportunity has been given to defend."

*For a detailed discussion of the procedures to initiate contempt proceedings, see Section 3.8, below.

In addition, MCL 600.1711(1); MSA 27A.1711(1), provides that a court *may* punish direct contempt summarily. The court is not required to punish direct contempt following summary proceedings. Instead, the court may choose to hold a hearing in cases of direct contempt.

Due process requires that, when a contempt is allegedly committed outside the court's presence, the accused be given notice of the charges against him or her, a reasonable time to prepare a defense to the charges, a hearing on those charges, and a reasonable opportunity to offer a defense of explanation. *In re Contempt of Robertson (Davilla v Fischer Corp)*, 209 Mich App 433, 438 (1995), and cases cited therein. In cases of criminal contempt, if summary contempt proceedings are not utilized, the defendant is entitled to the same procedural safeguards as for other crimes of equal gravity. *People v Johns*, 384 Mich 325, 333 (1971).

> **Note:** closely related to the question of whether a separate hearing is required is whether the alleged contemnor is entitled to a different judge at the separate hearing. See Section 3.14, below, for further discussion of this issue.

3.6 Prosecution of Action

In direct contempt cases, the judge who witnessed the contumacious conduct initiates the proceedings. There is no attorney for the complainant.*

*See Section 3.3, above, for a discussion of summary contempt proceedings.

In cases of indirect contempt, the person who initiates the proceedings differs depending upon whether the proceedings are civil or criminal. In some cases, the procedures for initiating the action are set forth in statute or court rule. Where such procedures are not provided, however, courts must look to case precedents—some federal—for guidance.

A. Proceedings Governed by Statute or Court Rule

In the following circumstances, initiation and prosecution of contempt proceedings are governed by statute or court rule:

- A prosecuting attorney or the attorney general must bring an action to abate a nuisance, MCL 600.3805 and 600.3820; MSA 27A.3805 and 27A.3820, and *Randall v Genesee Circuit Judge*, 336 Mich 335, 338–39 (1953).
- The Friend of the Court or an aggrieved party may institute actions to enforce orders and judgments in domestic relations cases, MCL 552.631(1); MSA 25.164(31)(1), and MCR 3.208(B).

- In criminal contempt proceedings for violations of personal protection orders, a prosecuting attorney must prosecute the proceedings unless the petitioner retains her own attorney, MCL 764.15b(6); MSA 28.874(2)(b), and MCR 3.708(G).

B. Criminal Contempt Proceedings

The prosecuting attorney should prosecute criminal contempt citations when summary proceedings are not used. If the prosecuting attorney declines, a disinterested private attorney may be appointed as special prosecutor. *Polo Fashions v Stock Buyers Int'l,* 760 F2d 698, 705 (CA 6, 1985) (construing Rule 42(b) of the Federal Rules of Criminal Procedure). An attorney for a party who is a beneficiary of a court order may not prosecute a criminal contempt citation alleging a violation of that order. *Young v United States ex rel Vuitton et Fils SA,* 481 US 787, 802–09; 107 S Ct 2124; 95 L Ed 2d 740 (1987).

C. Civil Contempt Proceedings

In cases of civil contempt, the persons injured by the contumacious conduct, through their attorneys, should initiate contempt proceedings. Thus, the parties to an underlying civil action or, if the civil contempt occurred in the context of a criminal trial, the prosecuting attorney or defense counsel, should initiate the civil contempt proceedings. See *In the Matter of Peter Pecora (United States v Russotti),* 746 F2d 945, 949 (CA 2, 1984). If the persons injured by the contempt are not parties to the underlying action, they may not initiate a civil contempt proceeding. *Latimer v Barmor,* 81 Mich 592, 604–05 (1890).

3.7 Right to Counsel for Alleged Contemnor

*See Section 5.9(B) for a more complete discussion of *Mead.*

An indigent person cannot be jailed for contempt of court unless counsel has been appointed or waived. *Mead v Batchlor,* 435 Mich 480, 505–06 (1990), and *Cooke v United States,* 267 US 517, 537; 45 S Ct 390; 69 L Ed 767 (1925). See also *People v Johnson,* 407 Mich 134, 148 (1979) (the court is required to appoint counsel before conducting civil contempt proceedings for a failure to testify before a grand jury). The Court in *Mead, supra,* at 498, concluded that the civil or criminal nature of the proceeding is not the determining factor. Rather, the right to appointed counsel is triggered by a person's fundamental interest in physical liberty.*

3.8 Initiation of Proceedings by Affidavit or Other Method

In cases of indirect contempt, or in direct contempt cases where the court has deferred a hearing on the alleged contempt, the court may punish the contemnor only "after proof of the facts charged has been made by affidavit or other method and opportunity has been given to defend." MCL 600.1711(2); MSA 27A.1711(2).

A. Initiation by Affidavit

MCR 3.606(A), the court rule that contains the required procedures for adjudicating indirect contempts, states:

> "For a contempt committed outside the immediate view and presence of the court, on a proper showing on ex parte motion supported by affidavits, the court shall either
>
> > "(1) order the accused person to show cause,* at a reasonable time specified in the order, why that person should not be punished for the alleged misconduct; or
> >
> > "(2) issue a bench warrant for the arrest of the person."

*See Form MC 230.

Thus, indirect and deferred contempt proceedings are usually initiated by ex-parte motion supported by an affidavit containing facts upon which the contempt charges are based. The court may then issue either a show cause order or a bench warrant for the civil arrest of the alleged contemnor. Before a show cause order or civil arrest warrant may issue, there must be a sufficient foundation of competent evidence contained in an affidavit or in the court's own records. *In re Contempt of Calcutt (Calcutt v Harper Grace Hospitals)*, 184 Mich App 749, 757 (1990). The alleged contemnor must be informed by the order to show cause or bench warrant of the nature of the charges and whether they are civil or criminal. *Ann Arbor v Danish News Co*, 139 Mich App 218, 232 (1984).

> **Note:** The foregoing general requirements may be altered by statute or court rule. For the requirements to initiate a proceeding for violation of a personal protection order, see MCR 3.708, discussed in Lovik, *Domestic Violence Benchbook: A Guide to Civil & Criminal Proceedings* (MJI, 1998), Sections 9.5–9.7.

B. "Other Method" of Initiating Proceedings

The Michigan Supreme Court has held that a trial court could take judicial notice of its own records to satisfy the requirement of §1711(2) of the Revised Judicature Act that proceedings must be initiated by affidavit "or other method." In *In re Albert*, 383 Mich 722, 724 (1970), the Court held that where the contempt consisted of the failure to timely file pleadings in the Court of Appeals, a show-cause order based upon affidavit was not required. "A court's judicial notice of its own records is a wholly satisfactory 'other method' of establishing the failure or the fact of filing in a particular period. . . ." *Id.* See also *In re Hudnut (Lazaros v Estate of Lazaros)*, 57 Mich App 351, 353 (1975) (where the administrator failed to appear or file a final accounting of an estate, the court could take judicial notice of its own records rather than filing an affidavit to initiate contempt proceedings).

C. Waiver of Notice

The alleged contemnor may waive the right to have the charges presented by affidavit by voluntarily appearing before the court and presenting a defense. *Matter of Lewis (Shaw v Pimpleton),* 24 Mich App 265, 267–68 (1970). Where the alleged contemnor does not appear voluntarily, there is no waiver of the right to have the charges presented by affidavit. *In the Matter of the Contempt of Evelyn Nathan (People v Traylor),* 99 Mich App 492, 494–95 (1980) (no waiver occurred, where the alleged contemnor was involuntarily returned to the courtroom by a policeman who overheard her allegedly contemptuous remarks).

3.9 Requirements for Affidavits

The form of affidavits must comply with MCR 2.119(B). The following discussion briefly summarizes how the formal requirements for affidavits have been applied in the context of contempt proceedings.

A. Affidavits Must Be Based on Personal Knowledge

The affidavit attached to the ex parte motion must state with specificity factual allegations that, if true, will support a finding of contempt. The allegations must be verified by a person with personal knowledge of the facts alleged; the allegations may not be "upon information and belief." See *In the Matter of Emery T Wood,* 82 Mich 75 (1890), *Russell v Wayne Circuit Judge,* 136 Mich 624 (1904), and *Randall v Genesee Circuit Judge,* 336 Mich 335 (1953). However, the judge may rely on reasonable inferences drawn from the facts stated. *State of Michigan ex rel Wayne Prosecutor v Powers,* 97 Mich App 166, 168 (1980).

B. Notice Requirements

The court may consider only those charges that the alleged contemnor has been notified of and allowed an opportunity to defend against. *In re Gilliland,* 284 Mich 604, 610 (1938). An affidavit must inform the alleged contemnor of the specific offense with which he is charged; however, the affidavit need not be as detailed as a criminal information. *Cross Co v UAW Local No 155 (AFL-CIO),* 377 Mich 202, 214–15 (1966), and *In re Contempt of Rochlin (Kane v Rochlin),* 186 Mich App 639, 649 (1990).

C. Proof of Damages

If damages are sought, the affidavit should allege facts from which the court can determine what damages have been caused by the contemnor's conduct.*

*See Section 4.3 for a discussion of "compensatory contempt."

D. Service of Motion and Affidavit on Alleged Contemnor

MCL 600.1968(4); MSA 27A.1968(4), and MCR 2.107(B)(1)(b) require personal service upon the party of any "notice or order" in contempt proceedings unless the court orders otherwise. Following the hearing on the

ex parte motion, the motion and the supporting affidavits must be personally served on the alleged contemnor in every case, regardless of whether a show-cause order or bench warrant is subsequently issued. See *In re Smilay (Smilay v Oakland Circuit Judge),* 235 Mich 151 (1926) (service of affidavit alleging violation of injunction on attorney for contemnor was insufficient, especially where attorney refused to act on behalf of contemnor in contempt proceedings).

3.10 Requirements for Orders to Show Cause

An order to show cause why the recipient should not be held in contempt of court must contain the time within which service must be made, and a date, within a reasonable time, for the hearing on the order. MCR 2.108(D) and 3.606(A)(1).* Unless the court orders otherwise, the order to show cause must be personally served upon the contemnor. MCL 600.1968(4); MSA 27A.1968(4), and MCR 2.107(B)(1)(b).

*Form MC 230 meets these requirements.

Where the contemnor was personally served with the court's injunctive order and the order to show cause why she should not be held in contempt for violating the order, the proceedings were not void because the contemnor was not present when testimony establishing contempt was taken. *People ex rel Attorney General v Yarowsky (In re Smith),* 236 Mich 169 (1926).

In domestic relations proceedings, the order to show cause may be served personally or by ordinary mail at the person's last known address. MCR 3.208(B)(2). The hearing on an order to show cause may be held no sooner than seven days after the order is personally served. The hearing may be held no sooner than nine days after the order is served by ordinary mail. MCR 3.208(B)(3).

In cases involving the alleged violation of a personal protection order, the petitioner must have the motion and order to show cause personally served upon the respondent at least seven days before the hearing. MCR 3.708(B)(2).

3.11 Requirements for Bench Warrants

Civil arrest and imprisonment for alleged contempt of court are authorized by MCL 600.6075(1); MSA 27A.6705(1). For the requirements for a warrant for civil arrest, see §§6076–6078 of the Revised Judicature Act.

An alleged contemnor taken into custody on a bench warrant must be kept in actual custody until ordered released by the court or discharged on bond. MCL 600.1735; MSA 27A.1735, and MCL 600.6083; MSA 27A.6083. Such persons must be kept separate from prisoners accused of crimes. MCL 600.6082; MSA 27A.6082, and MCL 801.103; MSA 28.1753.

*See Form FOC 14.

In most cases, the decision to issue a bench warrant rests with the discretion of the court. However, a statute or court rule may prescribe the procedure. For example, MCL 552.631(1); MSA 25.164(31)(1), and MCR 3.208(B)(4) allow for issuance of a bench warrant for nonpayment of support after the person has failed to appear in response to an order to show cause,* but MCR 3.208(B)(6) allows the Friend of the Court to petition for a bench warrant "if immediate action is necessary." MCL 600.3820; MSA 27A.3820, requires the court to issue a bench warrant to initiate contempt proceedings to abate a public nuisance.

3.12 Writs of Habeas Corpus for Prisoners Charged With Contempt

MCR 3.606(B) allows a court to use the writ of habeas corpus to bring before it an alleged contemnor who is already confined in jail or prison. That rule states: "A writ of habeas corpus to bring up a prisoner to testify may be used to bring before the court a person charged with misconduct under this rule." Upon a finding of contempt, the court "may enter an appropriate order for the disposition" of a prisoner found guilty of contempt. *Id*. For the formal and procedural requirements for writs of habeas corpus, see MCR 3.304.

3.13 Bond in Lieu of Arrest

MCR 3.606(C) provides that a contemnor may give a bond in lieu of arrest, as follows:

> "(1) The court may allow the giving of a bond in lieu of arrest, prescribing in the bench warrant the penalty of the bond and the return day for the defendant.
>
> "(2) The defendant is discharged from arrest on executing and delivering to the arresting officer a bond
>
> > "(a) in the penalty endorsed on the bench warrant to the officer and the officer's successors,
> >
> > "(b) with two sufficient sureties,* and
> >
> > "(c) with a condition that the defendant appear on the return day and await the order and judgment of the court.
>
> "(3) *Return of Bond.* On returning a bench warrant, the officer executing it must return the bond of the defendant, if one was taken. The bond must be filed with the bench warrant."

*A single surety licensed to do business in the state is sufficient. MCL 600.2621; MSA 27A.2621, and MCR 3.604(G).

Attorneys may not become sureties or post bonds for their clients in contempt proceedings. MCL 600.2655; MSA 27A.2655.

If the defendant who has executed a bond under MCR 3.606(C) fails to appear on the return date set in the bench warrant, the court may assign the bond to an aggrieved party for action to recover that party's damages and costs. MCR 3.606(D). The aggrieved party may recover on the bond by the summary procedure outlined in MCR 3.604. If the defendant fails to appear but the aggrieved party has not suffered loss or injury due to the contempt, the court must assign the bond to the prosecuting attorney or attorney general with an order to prosecute the bond under MCR 3.604. MCR 3.306(E).

3.14 Disqualification of Judge

As a general rule, a party seeking to disqualify a judge must show actual bias or prejudice. MCR 2.003(B)(1) and *In re Contempt of Rapanos,* 143 Mich App 483, 498 (1985). However, because of the nature of contempt proceedings, several specific rules also apply.

A. Direct Contempt Proceedings

The judge who witnessed the contumacious conduct in direct contempt cases should preside over summary proceedings. See MCL 600.1711(1); MSA 27A.1711(1), and *In re Contempt of Warriner (City of Detroit v Warriner),* 113 Mich App 549, 554–55 (1982). However, an independent judge must preside over direct contempt cases where proceedings are deferred.

In *People v Kurz,* 35 Mich App 643, 659 (1971), the Court of Appeals stated that "in every case where a judge defers consideration of the contempt citation until after the conclusion of the trial the charge must be considered and heard before another judge." See also *In re Contempt of Scharg (People v Godfrey),* 207 Mich App 438, 441 (1994), where the Court of Appeals stated that "*Kurz* requires a hearing before an independent judge in all deferred summary contempt proceedings, regardless of the actual objectivity of the court."

The *Kurz* opinion identified the requirement of an independent judge as "the *Mayberry* rule," referring to *Mayberry v Pennsylvania,* 400 US 455; 91 S Ct 499; 27 L Ed 2d 532 (1971). In *Mayberry,* the trial judge was subjected to several personal insults by the defendant, who represented himself in a criminal trial. The United States Supreme Court concluded that a judge who is personally attacked in such a manner "necessarily becomes embroiled in a running, bitter controversy." The defendant, therefore, was entitled to have the contempt charges heard by a different judge. *Id.,* at 465–66. Note, however, that *Kurz* does not require that the judge be personally attacked before disqualification. *Kurz, supra,* at 659.

For contrary views, see *In re Thurston (People v Shier),* 226 Mich App 205, 209 n 3 (1997), reversed 459 Mich 918 (1998) (the statement in *Kurz* that disqualification is required in every case is dictum), and *In re Albert,* 383 Mich 722, 725 (1970) (Court of Appeals panel is not required to disqualify itself to hear contempt charges of attorney arguing case before that panel).

If the judge who witnessed the contempt is disqualified from hearing the case, another judge of the same court who was not involved in the proceedings should preside. MCR 2.003(C)(4) and *In the Matter of Hirsch*, 116 Mich App 233, 241 (1982).

B. Indirect Contempt Cases

The judge who presided over the proceedings in the context of which the contumacious conduct occurred should preside over the contempt proceedings. *Cross Co v UAW Local No 155 (AFL-CIO)*, 377 Mich 202, 212 (1966).

C. Cases Involving Publication of Comments Concerning Court or Judge

*See Section 5.17 for further discussion of criticism of a court or judge as contempt.

Where the alleged contempt consists of the publication of comments concerning a court or judge, the defendant is entitled to have the contempt proceedings occur in a different *court.* "In proceedings for contempt arising out of the publication of any news, information, or comment concerning a court of record, except the supreme court, or any judge of that court the defendant has the right to have the proceedings heard by the judge of another court of record." MCL 600.1731; MSA 27A.1731.*

3.15 Right to Jury Trial Restricted to "Serious Criminal Contempt"

There is no right to jury trial in civil contempt cases. *Cross Co v UAW Local No 155 (AFL-CIO)*, 377 Mich 202, 211 (1971). The constitutional right to jury trial applies only to "serious" criminal contempt cases. *Bloom v Illinois*, 391 US 194, 201–11; 88 S Ct 1444; 20 L Ed 2d 522 (1968). In Michigan, criminal contempt is "petty" rather than "serious" if the penalty does not exceed six months. *People v Goodman*, 17 Mich App 175, 178–79 (1969). See also *Codispoti v Pennsylvania*, 418 US 506, 515; 94 S Ct 2687; 41 L Ed 2d 912 (1974) (a jury trial is required under US Const, Am VI, for contempt of court, where the sentences imposed on each contemnor aggregated more than 6 months).

In *United Mine Workers v Bagwell*, 512 US 821, 837 n 5; 114 S Ct 2552; 129 L Ed 2d 642 (1994), the United States Supreme Court declined to establish a line between "petty" and "serious" fines for contempt. The Court did conclude, however, that a fine of $52 million was a "serious" criminal fine.

3.16 Applicability of Rules of Evidence

The rules of evidence, other than those regarding privileges, do not apply during summary contempt hearings. MRE 1101(b)(4). However, in indirect contempt cases and cases where summary contempt proceedings could have been used but were not, the rules of evidence apply. MRE 1101(a).